

S.B.Civil Second Appeal No.203/2007.

Kedar Roop.

vs.

Smt. Chandra Bhandari.

Date : 21.5.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.Sajjan Singh, for the appellant.

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Heard learned counsel for the appellant.

The defendant/appellant is aggrieved against the eviction decree passed by the trial court dated 27.9.2006 and dismissal of his appeal by the first appellate court vide judgment and decree dated 23.1.2007.

Two courts below granted decree for eviction on the ground of personal bonafide necessity of the plaintiff as well as on the ground of non-user of the premises by the defendant.

Learned counsel for the appellant submitted that in fact, the finding on issue of non-user is based on no evidence. It is also submitted that only one

independent witness was produced by the plaintiff who stated that he does not know whether the defendant is using the shop as godown or not ?

It is also submitted that the appellant's previous landlord filed the suit which was dismissed. Thereafter, the plaintiff purchased the suit premises and filed the suit for eviction on the ground of her alleged necessity. It is submitted that the plaintiff had also separate shop and godown which are situated within the city whereas the godown in question is situated in city area. The plaintiff failed to prove the need of her suit shop merely because she purchased the property, therefore, she cannot be said to be a person in bonafide need of the suit premises.

I considered the submissions of learned counsel for the appellant and perused the impugned judgments.

In fact, the issue of non-user is a negative issue and by words of mouth, the burden can be discharged depending upon the facts and circumstances of the case. Here in this case, the plaintiff, her husband and one witness were produced and the evidence of whom was considered by the courts below on the question of non-user of the suit premises. Therefore, it is not a case of non-consideration of evidence rather it is a case of appreciation of evidence. It is not in dispute that the

plaintiff is also doing the business and she filed the suit for eviction on the ground of her personal bonafide necessity. Such finding is not vitiated by any reason.

In view of the above, I do not find any substantial question of law involved in this appeal. Consequently, this second appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya